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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LIZETH JIMENEZ, AYREANNE
BORDEAUX, KRYSTINE AQUINO-
RORALDO, and REGINA BERRIOS,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

MARS, INC.,

Defendant.

Case No. 2:23-cv-9610

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiffs Lizeth Jimenez, AyreAnne Bordeaux, Krystine Aquino-Roraldo, and
 2 Regina Berrios (“Plaintiffs”), on behalf of themselves and all other persons similarly
 3 situated, by and through their attorneys, make the following allegations pursuant to
 4 the investigation of their counsel and based upon information and belief, except as to
 5 allegations specifically pertaining to themselves, which are based on personal
 6 knowledge.

7 **NATURE OF THE ACTION**

8 1. Plaintiffs bring this suit on behalf of all Facebook users who have an
 9 account with Banfield Pet Hospital (“Banfield”) or VCA Animal Hospitals (“VCA”).

10 2. Mars. Inc. (“Defendant” or “Mars”) owns and operates Banfield and
 11 VCA, two of the “largest veterinary practices in the world.”¹

12 3. Defendant aids, employs, agrees with, and conspires with a third party,
 13 Meta Platforms, Inc. (“Facebook”), to eavesdrop on communications sent and
 14 received by Plaintiffs and Class members, including communications that contain
 15 sensitive and confidential information. By failing to receive consent before helping
 16 Facebook intercept these communications, Defendant violated the California Invasion
 17 of Privacy Act.

18 **PARTIES**

19 4. Plaintiff Lizeth Jimenez is domiciled in Huntington Park, California. In
 20 or around 2010, Plaintiff Jimenez created a Facebook account. Between 2019 and
 21 November 2023, Plaintiff Jimenez visited a website operated by Defendant,
 22 www.vcahospitals.com. Upon accessing www.vcahospitals.com, Plaintiff Jimenez
 23 scheduled veterinary appointments, purchased veterinary medications, and checked
 24 her pet’s medical records. Although unaware at the time, Plaintiff Jimenez is
 25 informed and believes that Defendant assisted Facebook with intercepting her
 26

27 ¹ BANFIELD PET HOSPITALS, LINKEDIN, <https://www.linkedin.com/company/banfield-pet-hospital/>;
 28 *see also* MARS, OUR VETERINARY BUSINESSES, <https://www.marsveterinary.com/who-we-are/our-companies/>.

1 communications, including communications that contained confidential information
2 about her pet's veterinarian records.

3 5. Plaintiff AyreAnne Bordeaux is domiciled in Sugarloaf, California. In
4 or around 2009, Plaintiff Bordeaux created a Facebook account. Between 2020 and
5 November 2023, Plaintiff Bordeaux visited a website operated by Defendant,
6 www.vcahospitals.com. Upon accessing www.vcahospitals.com, Plaintiff Bordeaux
7 scheduled veterinary appointments and checked her pet's medical records. Although
8 unaware at the time, Plaintiff Bordeaux is informed and believes that Defendant
9 assisted Facebook with intercepting her communications, including communications
10 that contained confidential information about her pet's veterinarian records.

11 6. Plaintiff Krystine Aquino-Roraldo is domiciled in Daly City, California.
12 In or around 2010, Plaintiff Aquino-Roraldo created a Facebook account. Between
13 August 2022 and November 2022, Plaintiff Aquino-Roraldo visited a website
14 operated by Defendant, www.banfield.com. Upon accessing www.banfield.com,
15 Plaintiff Aquino-Roraldo scheduled veterinary appointments, purchased veterinary
16 medications, and checked her pet's medical records. Although unaware at the time,
17 Plaintiff Aquino-Roraldo is informed and believes that Defendant assisted Facebook
18 with intercepting her communications, including communications that contained
19 confidential information about her pet's veterinarian records.

20 7. Plaintiff Regina Berrios is domiciled in Roseville, California. In or
21 around July 2007, Plaintiff Berrios created a Facebook account. Between July 2023
22 and November 2023, Plaintiff Berrios visited a website operated by Defendant,
23 www.banfield.com. Upon accessing www.banfield.com, Plaintiff Berrios scheduled
24 veterinary appointments and checked her pet's medical records. Although unaware at
25 the time, Plaintiff Berrios is informed and believes that Defendant assisted Facebook
26 with intercepting her communications, including communications that contained
27 confidential information about her pet's veterinarian records.

1 13. In 2021, Facebook generated \$117 billion in revenue.⁵ Roughly 97% of
2 that came from selling advertising space.⁶

3 14. Facebook sells advertising space by highlighting its ability to target
4 users.⁷ Facebook can target users so effectively because it surveils user activity both
5 on and off its site.⁸ This allows Facebook to make inferences about users beyond
6 what they explicitly disclose, like their “interests,” “behavior,” and “connections.”⁹
7 Facebook compiles this information into a generalized dataset called “Core
8 Audiences,” which advertisers use to apply highly specific filters and parameters for
9 their targeted advertisements.¹⁰

10 15. Advertisers can also build “Custom Audiences.”¹¹ Custom Audiences
11 enable advertisers to reach “people who have already shown interest in [their]
12 business, whether they’re loyal customers or people who have used [their] app or
13 visited [their] website.”¹² With Custom Audiences, advertisers can target existing
14 customers directly, and they can also build “Lookalike Audiences,” which “leverages
15 information such as demographics, interests, and behavior from your source audience
16 to find new people who share similar qualities.”¹³ Unlike Core Audiences,
17 advertisers can build Custom Audiences and Lookalike Audiences only if they first

18 ⁵ FACEBOOK, META REPORTS FOURTH QUARTER AND FULL YEAR 2021 RESULTS,
19 <https://investor.fb.com/investor-news/press-release-details/2022/Meta-Reports-Fourth-Quarter-and-Full-Year-2021-Results/default.aspx>

20 ⁶ *Id.*

21 ⁷ FACEBOOK, WHY ADVERTISE ON FACEBOOK,
22 <https://www.facebook.com/business/help/205029060038706>.

23 ⁸ FACEBOOK, ABOUT FACEBOOK PIXEL,
24 <https://www.facebook.com/business/help/742478679120153?id=1205376682832142>.

25 ⁹ FACEBOOK, AD TARGETING: HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR BUSINESS,
26 <https://www.facebook.com/business/ads/ad-targeting>.

27 ¹⁰ FACEBOOK, EASIER, MORE EFFECTIVE WAYS TO REACH THE RIGHT PEOPLE ON FACEBOOK,
28 <https://www.facebook.com/business/news/Core-Audiences>.

¹¹ FACEBOOK, ABOUT CUSTOM AUDIENCES,
<https://www.facebook.com/business/help/744354708981227?id=2469097953376494>.

¹² FACEBOOK, AD TARGETING, HELP YOUR ADS FIND THE PEOPLE WHO WILL LOVE YOUR BUSINESS,
<https://www.facebook.com/business/ads/ad-targeting>.

¹³ Facebook, About Lookalike Audiences,
<https://www.facebook.com/business/help/164749007013531?id=401668390442328>.

1 supply Facebook with the underlying data. They can do so through two mechanisms:
 2 by manually uploading contact information for customers, or by utilizing Facebook’s
 3 “Business Tools.”¹⁴

4 16. As Facebook puts it, the Business Tools “help website owners and
 5 publishers, app developers and business partners, including advertisers and others,
 6 integrate with Facebook, understand and measure their products and services, and
 7 better reach and serve people who might be interested in their products and
 8 services.”¹⁵ Put more succinctly, Facebook’s Business Tools are bits of code that
 9 advertisers can integrate into their website, mobile applications, and servers, thereby
 10 enabling Facebook to intercept and collect user activity on those platforms.

11 17. The Business Tools are automatically configured to capture certain data,
 12 like when a user visits a webpage, that webpage’s Universal Resource Locator
 13 (“URL”) and metadata, or when a user downloads a mobile application or makes a
 14 purchase.¹⁶ Facebook’s Business Tools can also track other events. Facebook offers
 15 a menu of “standard events” from which advertisers can choose, including what
 16 content a visitor views or purchases.¹⁷ Advertisers can even create their own tracking
 17 parameters by building a “custom event.”¹⁸

18
 19
 20 ¹⁴ FACEBOOK, CREATE A CUSTOMER LIST CUSTOM AUDIENCE,
<https://www.facebook.com/business/help/170456843145568?id=2469097953376494>; Facebook,
 21 Create a Website Custom Audience,
<https://www.facebook.com/business/help/1474662202748341?id=2469097953376494>.

22 ¹⁵ FACEBOOK, THE FACEBOOK BUSINESS TOOLS,
<https://www.facebook.com/help/331509497253087>.

23 ¹⁶ See FACEBOOK, FACEBOOK PIXEL, ACCURATE EVENT TRACKING, ADVANCED,
<https://developers.facebook.com/docs/facebook-pixel/advanced/>; see also FACEBOOK, BEST
 24 PRACTICES FOR FACEBOOK PIXEL SETUP,
<https://www.facebook.com/business/help/218844828315224?id=1205376682832142>; FACEBOOK,
 25 APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>.

26 ¹⁷ FACEBOOK, SPECIFICATIONS FOR FACEBOOK PIXEL STANDARD EVENTS,
<https://www.facebook.com/business/help/402791146561655?id=1205376682832142>.

27 ¹⁸ FACEBOOK, ABOUT STANDARD AND CUSTOM WEBSITE EVENTS,
<https://www.facebook.com/business/help/964258670337005?id=1205376682832142>; see also
 28 FACEBOOK, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>.

1 18. One such Business Tool is the Facebook Tracking Pixel. Facebook
2 offers this piece of code to advertisers, like Mars, to integrate into their websites. As
3 the name implies, the Facebook Tracking Pixel “tracks the people and type of actions
4 they take.”¹⁹ When a user accesses a website hosting the Facebook Tracking Pixel,
5 Facebook’s software script surreptitiously directs the user’s browser to send a
6 separate message to Facebook’s servers. This second, secret transmission contains
7 the original GET request sent to the host website, along with additional data that the
8 Pixel is configured to collect. This transmission is initiated by Facebook code and
9 concurrent with the communications with the host website. Two sets of code are thus
10 automatically run as part of the browser’s attempt to load and a website—the
11 website’s own code, and Facebook’s embedded code.

12 19. An example illustrates the point. Take an individual who navigates to
13 banfield.com and clicks on a tab to browse medication. Once that tab is clicked, the
14 individual’s browser sends a GET request to Defendant’s server requesting that
15 server to load the particular webpage. Because Defendant utilizes the Facebook
16 Tracking Pixel, Facebook’s embedded code, written in JavaScript, sends secret
17 instructions back to the individual’s browser, without alerting the individual that this
18 is happening. Facebook causes the browser to secretly duplicate the communication
19 with Defendant, transmitting it to Facebook’s servers, alongside additional
20 information that transcribes the communication’s content and the individual’s
21 identity.

22 20. After collecting and intercepting this information, Facebook processes it,
23 analyzes it, and assimilates it into datasets like Core Audiences and Custom
24 Audiences.

25 21. Facebook’s other Business Tools function the same. For mobile
26 applications, advertisers can utilize the Facebook SDK, which contains “component
27

28 ¹⁹ FACEBOOK, RETARGETING, <https://www.facebook.com/business/goals/retargeting>.

1 SDKs,” like the App Events API, allowing advertisers to track events on their mobile
2 apps so they can “measure ad performance and build audiences for ad targeting.”²⁰

3 22. Advertisers can also utilize the “Conversions API.” The Conversions
4 API lets advertisers circumvent a user’s choice to exercise privacy controls.²¹ More
5 technically, the Conversions API is Facebook code that advertisers can implement
6 server-side.²² Because it operates server-side, the Conversions API ignores users’
7 decision to opt out of tracking, collecting the same data it would otherwise through “a
8 connection between an advertiser’s server and Facebook.”²³ When the Conversions
9 API collects “[s]erver events,” those data points are “linked to a Meta Pixel ID and
10 are processed like web events sent via Pixel.”²⁴ As with the Facebook Tracking
11 Pixel, the Conversions API intercepts these communications contemporaneously and
12 surreptitiously.²⁵ Facebook “recommend[s] that advertisers implement the
13 Conversions API alongside their Meta Pixel and follow other best practices.”²⁶

14 **II. DEFENDANT AND FACEBOOK’S BUSINESS TOOLS**

15 23. Defendant owns and operates banfield.com and vcahospitals.com.
16 Defendant has integrated the Facebook Tracking Pixel into both websites.

17 //

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21 //

22 ²⁰ FACEBOOK, APP EVENTS API, <https://developers.facebook.com/docs/marketing-api/app-event-api/>

23 ²¹ FACEBOOK, CONVERSIONS API, <https://developers.facebook.com/docs/marketing-api/conversions-api/>. This refers to device specific privacy controls.

24 ²² *Id.*

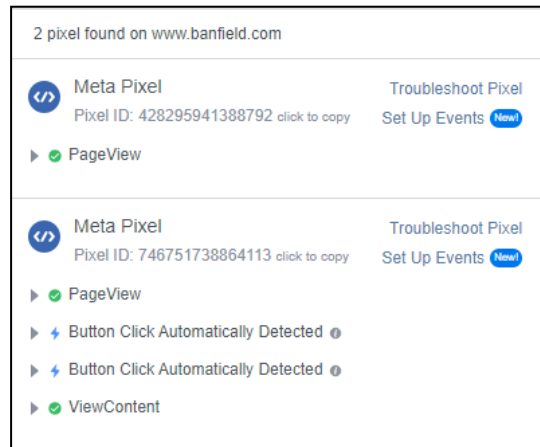
25 ²³ *Id.*

26 ²⁴ *Id.*

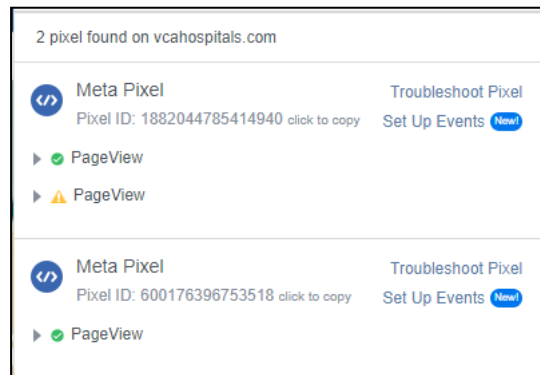
27 ²⁵ FACEBOOK, HANDLING DUPLICATE PIXEL AND CONVERSIONS API EVENTS,
28 <https://developers.facebook.com/docs/marketing-api/conversions-api/deduplicate-pixel-and-server-events/> (“Once your event fulfills both conditions, we keep the first one and remove the following one. If a server and browser event arrive at approximately the same time (within 15 seconds of each other), we favor the browser event.”).

²⁶ *Id.*

1 Figure 1



9 Figure 2



17 24. Through these websites, pet owners can schedule appointments,
 18 purchase medications, and check their pet's medical records. When pet owners use
 19 these functionalities, they must provide Defendant with confidential information
 20 about themselves and their pets. Unbeknownst to pet owners, however, Defendant
 21 uses Facebook's Business Tools to help Facebook eavesdrop on those confidential
 22 communications.

23 **A. Scheduling Appointments**

24 25. To schedule an appointment, pet owners must provide their pet's name
 25 and the reason for the visit. Once they input this information, they can pick a
 26 veterinarian and choose a location and time.

27 //

28 //



1 Figures 3-6 (Banfield Scheduling Appointments)

2

3 Banfield PET HOSPITAL | bhere

4 Please tell us about your pet.

5 Do they wag, or purr?

6  Dog  Cat


7 My pet isn't shown >


8 Your pet's name



9

Gender


Choose where and when


Lakewood, CA 

 Monday, October 30, 2023

<  Show map With available appointments only 

Lakewood, CA

 5488 Woodruff Ave. Lakewood, CA 90713
(11 miles)

 562-461-0010

Available times: Monday, Oct 30, 2023

Reason for visit?

Choose reason Not sure? [Call us >](#)

Please select all that apply:

☐ Changing vet

☒ General health check

☐ New pet

Let's get your contact information.

Your veterinary team will be in touch soon with details about your visit.

First name

Last name

Phone

Email

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1 Figures 7-10 (VCA Scheduling Appointments)


2

3 

4

5 SELECT YOUR PET

6 Who will you bring in for this appointment?

7  Dog


8 Pet Name*
Luke


9 [Continue »](#)


10


11 REASON FOR APPOINTMENT

12 Why does Luke need to see the veterinarian?

13  Sick Visit

14  Wellness Exam/Vaccines

15  Other

16  Emergency


17


18 BOOK AN APPOINTMENT

19 Select an appointment date and time

20 [First Available](#) [Date & Time](#) [Veterinarian](#)

21 First Available Appointment

22  Gianna Zavota



23  Tuesday, Nov 7, 2023 10:30 AM


24 [Book Now](#)

CONFIRM YOUR INFORMATION

Almost done!

Your reservation will **expire in 9:58.**
Please enter the information below to confirm.

 Chad Cleveland 

 Tuesday, Nov 7, 2023 8:30 AM

First Name*

Last Name*

Email*

Mobile Number*

☐ Send me text reminders for this appointment.
(Standard message rates apply.)

[Book this appointment](#)

25 //

26 //

27 //

28 //

26. Defendant uses the Facebook Tracking Pixel to eavesdrop on these communications.

27. Facebook receives, at a minimum, information disclosing the pet's name, the appointment's location, the appointment's time, the reason for the visit, and the owner's first name, last name, email address, and phone number.

B. Purchasing Medications

28. To purchase medications, pet owners must have an account and a prescription.

Figure 11

Banfield PET HOSPITAL | shop

Galliprant® Tablets

Elanco Animal Health

Strength & Size
Please select...

Packaging
Please select...

Frequency
One-time order

Never forget to order with **C** AutoShip

Quantity
1

Log in to MyBanfield

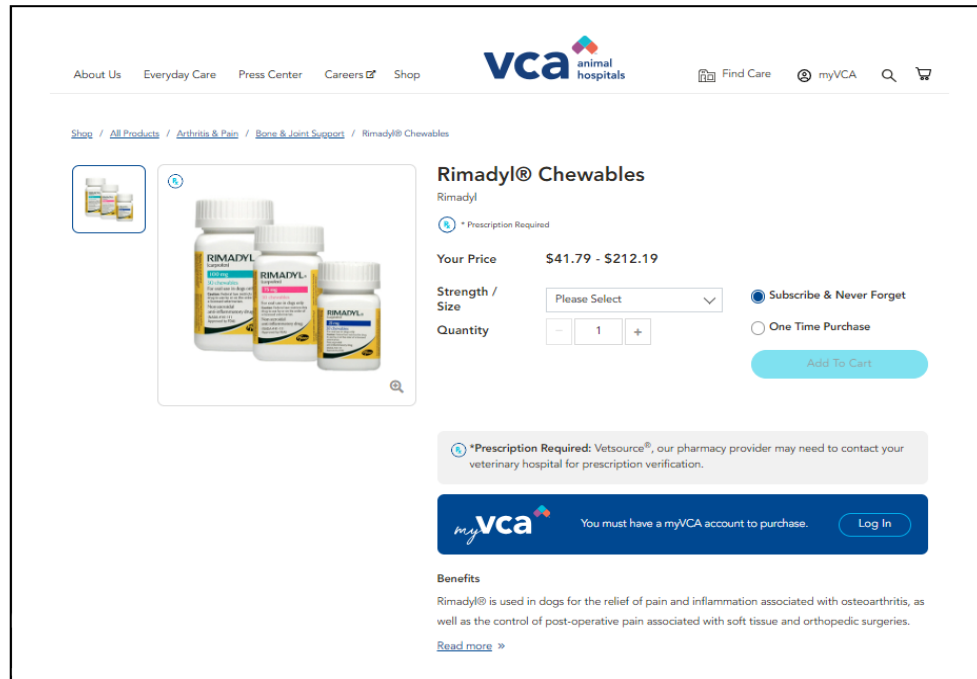
\$53.97 - \$374.84

Save up to 20% with an **OWP** Optimum Wellness Plan

Save 5% with **C** AutoShip

Px Prescription required

1 Figure 12

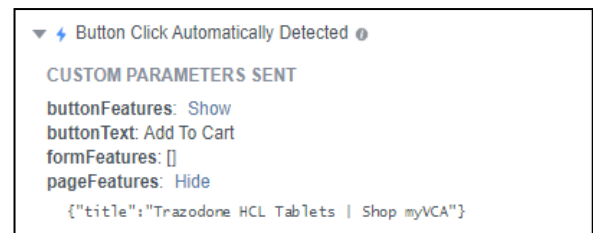
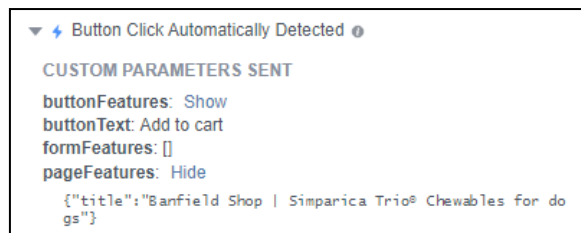


13 29. To log in, users must enter their email addresses.

14 30. Defendant uses the Facebook Tracking Pixel to eavesdrop on these
15 communications.

16 31. Facebook receives, at a minimum, information disclosing the
17 purchaser's email address and the name of the prescription.

18 Figures 13-14



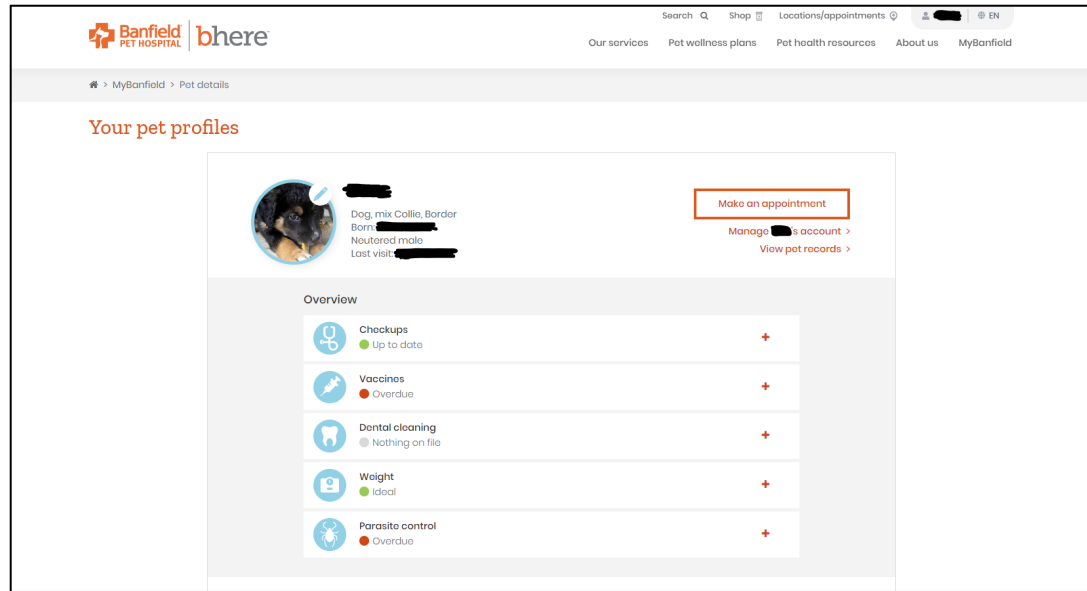
23 C. Checking Medical Records

24 32. To check a pet's medical records, owners must log into their accounts.

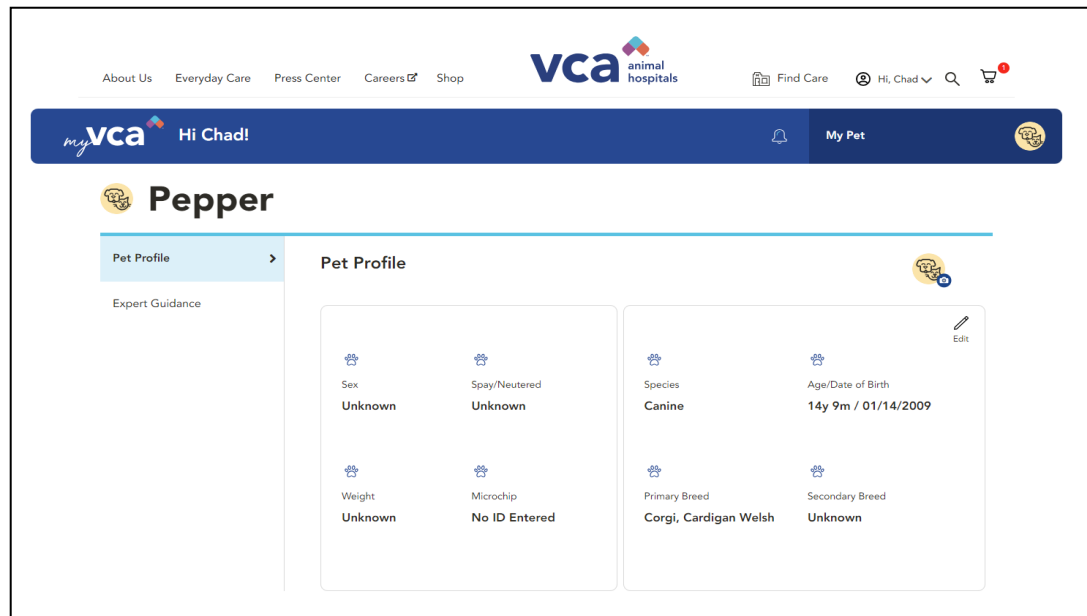
25 33. Pet owners can then review the "pet profile," which displays the pet's
26 name and medical history.

27 //

1 Figure 15



12 Figure 16



23 34. Defendant uses the Facebook Tracking Pixel to eavesdrop on these

24 communications.

25 //

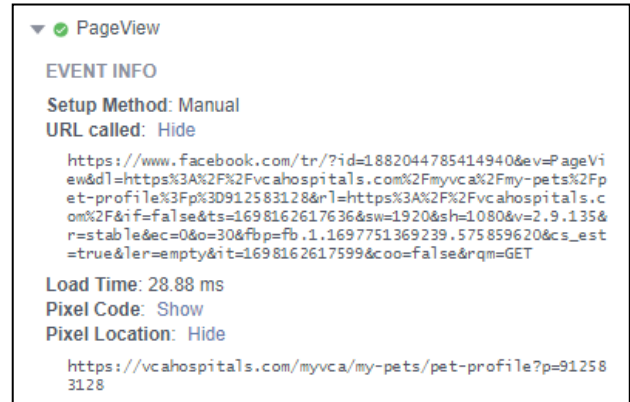
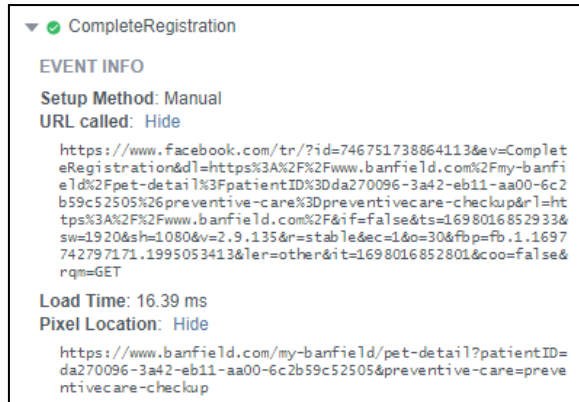
26 //

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35. Facebook receives, at a minimum, information revealing the user's email address and what kind of medical history is being viewed.

Figures 17-18



III. DEFENDANT ASSISTS FACEBOOK WITH PAIRING EVENT DATA TO A USER'S IDENTITY

36. As industry leaders,²⁷ trade groups,²⁸ and courts agree,²⁹ an email address is personally identifiable information. Defendant discloses email addresses to Facebook whenever a pet owner schedules an appointment, purchases medications, or checks their pet's medical records.

37. Along with disclosing email addresses, Defendant's Pixels pair event data with a user's Facebook ID.

38. When a user accesses Defendant's websites while logged into Facebook, the Pixel will compel that user's browser to transmit the c_user cookie, which contains the user's unencrypted Facebook ID. When accessing www.banfield.com, for example, Facebook received the following six cookies:³⁰

²⁷ Allison Schiff, *Can Email Be The Next Big Online Identifier?*, AD EXCHANGER (Aug. 25, 2020), <https://www.adexchanger.com/data-exchanges/can-email-be-the-next-big-online-identifier/> (quoting Tom Kershaw, CTO of Magnite, who said "[a]n email address is universally considered to be PII, so as such it can never be a valid identifier for online advertising").

²⁸ NETWORK ADVERTISING INITIATIVE, NAI CODE OF CONDUCT 19 (2019), <https://thenai.org/wp-content/uploads/2021/07/naicode2020.pdf> (identifying email as PII).

²⁹ See, e.g., *United States v. Hastie*, 854 F.3d 1298, 1303 (11th Cir. 2017) ("Email addresses fall within the ordinary meaning of information that identifies an individual. They can prove or establish the identity of an individual.").

³⁰ Not pictured here is the fbp cookie, which is sent as a first-party cookie.

1 43. The `_fbp` cookie expires after 90 days unless the visitor's browser
 2 accesses the same website.³⁷ If that happens, the time resets, and another 90 days
 3 begins to accrue.³⁸

4 44. The Facebook Tracking Pixel uses both first- and third-party cookies. A
 5 first-party cookie is "created by the website the user is visiting"—*i.e.*, Mars.³⁹ A
 6 third-party cookie is "created by a website with a domain name other than the one the
 7 user is currently visiting"—*i.e.*, Facebook.⁴⁰ The `_fbp` cookie is always transmitted
 8 as a first-party cookie. A duplicate `_fbp` cookie is sometimes sent as a third-party
 9 cookie, depending on whether the browser has recently logged into Facebook.

10 45. Facebook, at a minimum, uses the `fr`, `_fbp`, and `c_user` cookies to link to
 11 Facebook IDs and corresponding Facebook profiles.

12 46. Defendant uses these cookies to pair event data with personally
 13 identifiable information so it can later retarget consumers on Facebook.

14 **IV. DEFENDANT NEVER RECEIVED USERS' CONSENT TO DISCLOSE** 15 **THEIR CONFIDENTIAL COMMUNICATIONS TO FACEBOOK**

16 **A. Veterinarian Records are Sensitive and Confidential**

17 47. California law prohibits veterinarians from "disclos[ing] any information
 18 concerning an animal receiving veterinary services, the client responsible for the
 19 animal receiving veterinary services, or the veterinary care provided to an animal."
 20 Cal. Bus. & Prof. Code § 4857(a).

21 48. At least eleven other states statutorily protect veterinary records from
 22 unauthorized disclosure.⁴¹

23 _____
 24 ³⁷ See FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policy/cookies/>.

25 ³⁸ Also confirmable through developer tools.

26 ³⁹ PC MAG, FIRST-PARTY COOKIES, <https://www.pcmag.com/encyclopedia/term/first-party-cookie>.
 This is confirmable by using developer tools to inspect a website's cookies and track network
 activity.

27 ⁴⁰ *Id.* This is also confirmable by tracking network activity.

28 ⁴¹ See, e.g., Ala. Admin Code r. 930-X-1.10(15); 24 Del.C. §3316(a)(7); Fla. Stat. § 474.2165;
 O.C.G.A. § 50-18-72(a)(2); 225 ILCS 115/25.17(a); IC 25-38.1-4-5.5; K.S.A. 47-839; KRS

1 49. As the American Veterinary Medical Association recognizes, “[t]he
2 information within veterinary medical records is confidential.”⁴²

3 **B. Defendant Never Receives Consent from Pet Owners to Disclose**
4 **their Sensitive and Confidential Communications**

5 50. Defendant’s Terms of Service informs pet owners that, “[i]f you choose
6 to order pet medications or other prescriptions products via the Sites you are waiving
7 confidentiality of those records, to the extent applicable, *with respect of third parties*
8 *necessary to fill those prescriptions.*”⁴³ Facebook has no role in filling out
9 prescriptions.

10 51. Defendant also expressly represents that it will refrain from collecting
11 personally identifiable information. Defendant labels the Facebook Tracking Pixel as
12 a “targeting” cookie. Those cookies, Defendant represents, “do not store directly
13 personal information, but are based on uniquely identifying your browser and internet
14 device.”

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25 321.185; Okla. Stat. tit. 59 § 698.16a(D); 22 Tex. Admin. Code § 573.28(a); U.C.A. 1953 § 58-28-
26 605; Cal. Bus. & Prof. Code § 4857.

27 ⁴² AMERICAN VETERINARY MEDICAL ASSOCIATION, PRINCIPLES OF VETERINARY MEDICAL ETHICS OF
28 THE AVMA (Oct. 20, 2023), [https://www.avma.org/resources-tools/avma-policies/principles-
veterinary-medical-ethics-avma](https://www.avma.org/resources-tools/avma-policies/principles-veterinary-medical-ethics-avma).

⁴³ MARS, INC., BANFIELD TERMS AND CONDITIONS, <https://www.banfield.com/General/Terms>; Mars,
Inc., VCA Animal Hospitals Terms and Conditions, <https://vcahospitals.com/terms-and-conditions>.

1 Figures 22-23

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52. As courts across the country have recognized, however, the identifiers that Defendant's Pixels capture—Facebook ID, email address, first name, last name,

CLASS ACTION COMPLAINT – JURY TRIAL DEMANDED

1 and phone number—constitute “directly personal information.” By capturing this
 2 information anyway, Defendant fails to receive consent from visitors to intercept their
 3 communications.

4 **C. Facebook’s Terms of Service, Cookies Policy, and Other Policies**

5 53. Likewise, Facebook never receives consent from Defendant’s website
 6 users to intercept and collect electronic communications containing their sensitive
 7 and unlawfully disclosed information. In fact, Facebook expressly warrants the
 8 opposite.

9 54. When first signing up for Facebook, a user assents to three agreements:
 10 the Facebook Terms of Service,⁴⁴ the Cookies Policy,⁴⁵ and the Data Policy.⁴⁶ For
 11 California residents, Facebook also publishes a California Privacy Policy.⁴⁷

12 55. Facebook’s Terms of Service begins by stating that “[p]rotecting
 13 people’s privacy is central to how we’ve designed our ad system.”⁴⁸ The Terms of
 14 Service then prohibits anyone from using Facebook’s Products in a manner that is
 15 “unlawful, misleading, discriminatory or fraudulent.”⁴⁹

16 56. Facebook’s Data Policy recognizes that there may be “[d]ata with
 17 special protections,” meaning information that “could be subject to special
 18 protections under the laws of your country.”⁵⁰ The Data Policy goes on to describe
 19 how Facebook collects information from its “Meta Business Tools,” including “our
 20 social plug-ins (such as the Like button), Facebook Login, our APIs and SDKs, or the
 21 Meta pixel.”⁵¹ Specifically, Facebook acknowledges that “[p]artners receive your
 22

23 ⁴⁴ FACEBOOK, TERMS OF SERVICE, <https://www.facebook.com/legal/terms/update>.

24 ⁴⁵ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
 25 <https://www.facebook.com/policies/cookies/>.

26 ⁴⁶ FACEBOOK, DATA POLICY, <https://www.facebook.com/about/privacy/update>.

27 ⁴⁷ FACEBOOK, CALIFORNIA PRIVACY NOTICE, <https://www.facebook.com/legal/policy/ccpa>.

28 ⁴⁸ FACEBOOK, TERMS OF SERVICE, <https://www.facebook.com/legal/terms/update..>

⁴⁹ *Id.*

⁵⁰ FACEBOOK, DATA POLICY, <https://www.facebook.com/about/privacy/update>.

⁵¹ *Id.*

1 data when you visit or use their services or through third parties they work with.”⁵²

2 57. Facebook then offers an express representation: **“We require each of**
 3 **these partners to have lawful rights to collect, use and share your data before**
 4 **providing any data to us.”**⁵³ Facebook does acknowledge collecting “data with
 5 special protections” to personalize ads, but critically, only sensitive information that
 6 users “choose to provide.”⁵⁴

7 58. Facebook’s Cookies Policy ratifies those representations, stating “the
 8 Data Policy will apply to our processing of the data that we collect via cookies.”⁵⁵

9 59. For California residents, Facebook reiterates that policy: “We require
 10 each of these partners to have rights to collect, use, and share your data before
 11 providing any data to us.”⁵⁶ The California Privacy Policy also restrict Facebook’s
 12 ability to collect “data with special protections,” stating they do so only when users
 13 “choose to provide it.”⁵⁷

14 60. Facebook’s other representations reinforce these warranties. In its
 15 Advertising Policy, Facebook states “[w]e do not use sensitive personal data for ad
 16 targeting.”⁵⁸ And in a blog post titled “About Restricted Meta Business Tools Data,”
 17 Facebook asserts it has “policies around the kinds of information businesses can share
 18 with us.”⁵⁹ Facebook does not “want websites or apps sending us sensitive
 19 information about people.”⁶⁰ Sensitive information includes, among other things,
 20
 21

22 ⁵² *Id.*

23 ⁵³ *Id.*

24 ⁵⁴ *Id.*

25 ⁵⁵ FACEBOOK, COOKIES & OTHER STORAGE TECHNOLOGIES,
<https://www.facebook.com/policies/cookies/>.

26 ⁵⁶ FACEBOOK, CALIFORNIA PRIVACY NOTICE, <https://www.facebook.com/legal/policy/ccpa>.

27 ⁵⁷ *Id.*

28 ⁵⁸ FACEBOOK, ADVERTISING POLICY, <https://www.facebook.com/policies/ads/>.

⁵⁹ FACEBOOK, ABOUT RESTRICTED META BUSINESS TOOLS DATA,
<https://www.facebook.com/business/help/1057016521436966?id=188852726110565>

⁶⁰ *Id.*

1 “any information defined as sensitive under applicable laws, regulations and
2 applicable industry guidelines.”⁶¹

3 61. These representations are repeated frequently. Facebook created a “Help
4 Center” to better explain its practices to users. In an article titled, “How does
5 Facebook receive information from other businesses and organizations?,” Facebook
6 reiterates its promise to “prohibit businesses or organizations from sharing sensitive
7 information with us,” and if Facebook “determine[s] that a business or an
8 organization is violating our terms, we’ll take action against that business or
9 organization.”⁶² In another article, titled, “How does Meta work with data
10 providers?,” Facebook repeats this promise, stating “[b]usinesses that advertise on
11 Facebook are required to have any necessary rights and permissions to use this
12 information, as outlined in our Custom Audience Terms that businesses must agree
13 to.”⁶³

14 62. A reasonable user who reads Facebook’s terms and representations
15 would understand those terms as requiring Facebook to enforce an advertiser’s
16 compliance with its terms. At a minimum, those terms and representations require
17 Facebook to build safeguards for sensitive information, like information disclosing a
18 pet’s health records. No reasonable user would read those terms and representations
19 as permitting Facebook to intentionally intercept electronic communications that it
20 knows the law protects and deems sensitive. And no user, reasonable or not, could
21 read those terms as allowing Facebook to aid and abet another party’s disclosure of
22 such protected and sensitive information. In short, Facebook never receives consent
23 from users to intentionally intercept and monetize electronic communications
24 disclosing sensitive information that the law protects.

25 _____
26 ⁶¹ *Id.*

27 ⁶² FACEBOOK, HOW DOES FACEBOOK RECEIVE INFORMATION FROM OTHER BUSINESSES AND
28 ORGANIZATIONS, <https://www.facebook.com/help/2230503797265156>.

⁶³ HOW DOES META WORK WITH DATA PROVIDERS?,
<https://www.facebook.com/help/494750870625830?ref=dp>.

CLASS ACTION ALLEGATIONS

63. Plaintiffs seek certification of the following class (the “Class”): All persons in the United States who have a Facebook account and accessed and navigated Defendant’s websites.

64. Plaintiffs reserve the right to modify the class definition, including by using subclasses, as appropriate based on further investigation and discovery obtained in the case.

65. Numerosity of the Class: The Class is composed of at least thousands of individuals, the joinder of which in one action would be impracticable. The disposition of their claims through this class action will benefit both the parties and the Court.

66. Existence and Predominance of Common Questions of Fact and Law: There is a well-defined community of interest in the questions of law and fact involved affecting the members of the proposed Class. The questions of law and fact common to the proposed Class predominate over questions affecting only individual class members. Such questions include, but are not limited to, the following: whether Defendant’s disclosure of personally identifiable information violated the laws and statutes at issue herein, whether Plaintiffs and the proposed Class members are entitled to damages, reasonable attorneys’ fees, pre-judgment interest and costs of this suit, and whether Defendant should be enjoined from similar conduct in the future.

67. Typicality: Plaintiffs are asserting claims that are typical of the proposed Class members’ claims, having accessed and browsed Defendant’s websites, www.banfield.com and www.vcahospitals.com. Plaintiffs and the proposed Class members have similarly suffered harm arising from Defendant’s violations of the law, as alleged herein.

68. Adequacy: Plaintiffs are adequate representatives of the proposed Class. Their interests do not conflict with, and are not antagonistic to, the interests of the

1 members of that Class. They will fairly and adequately represent and protect the
2 interests of the Class.

3 69. Superiority: A class action is superior to other available means for the
4 fair and efficient adjudication of Plaintiffs' and the proposed Class members' claims.
5 Plaintiffs and the proposed Class members have suffered irreparable harm as a result
6 of Defendant's unfair, unlawful, and unconscionable conduct. Because of the size of
7 the individual Class members' claims, few, if any, proposed Class members could
8 afford to seek legal redress for the wrongs complained of herein. Absent the class
9 action, the proposed Class members will continue to suffer losses and the violations
10 of law described herein will continue without remedy, and Defendant will be
11 permitted to retain the proceeds of their misdeeds. Defendant continues to engage in
12 the unlawful, unfair, and unconscionable conduct that is the subject of this
13 Complaint.

14 70. California's substantive law applies to every member of the Class,
15 regardless of where in the United States the Class member resides. Defendant's own
16 Terms of Service explicitly state: "To the maximum extent permitted by law, these
17 Terms of Use shall be governed by and construed in accordance with the laws of the
18 State of California without regard to its conflict of law rules, provided that for
19 residents of Quebec, the laws of the Province of Quebec will apply."⁶⁴ By choosing
20 California law for the resolution of disputes covered by its Terms of Service,
21 Defendant concedes that it is appropriate for this Court to apply California law to the
22 instant dispute to all Class members. Further, California's substantive laws may be
23 constitutionally applied to the claims of Plaintiffs and the Class members under the
24 Due Process Clause, *see* U.S. Const. amend. XIV, § 1, and the Full Faith and Credit
25 Clause, *see* U.S. Const. art. IV, § 1, of the U.S. Constitution. California has
26 significant contact, or significant aggregation of contacts, the claims asserted by the
27

28 ⁶⁴ <https://vcahospitals.com/terms-and-conditions>.

1 Plaintiffs and all Class members, thereby creating state interests that ensure that the
 2 choice of California state law is not arbitrary or unfair. Defendant's decision to avail
 3 itself of California's laws, and to engage in the challenged conduct from and
 4 emanating out of California, renders the application of California law to the claims
 5 herein constitutionally permissible. The application of California laws to the Class is
 6 also appropriate under California's choice of law rules because California has
 7 significant contacts to the claims of Plaintiffs and the proposed Class and California
 8 has the greatest interest in applying its laws here.

9 71. Plaintiffs reserve the right to revise the foregoing class allegations and
 10 definitions based on facts learned and legal developments following additional
 11 investigation, discovery, or otherwise.

12 **COUNT I**
 13 **Violation Of The California Invasion Of Privacy Act,**
 14 **Cal. Penal Code § 631**

15 72. Plaintiffs repeat the allegations contained in the paragraphs above as if
 16 fully set forth herein.

17 73. Plaintiffs bring this Count individually and on behalf of the members of
 18 the putative Class against Defendant.

19 74. The California Invasion of Privacy Act ("CIPA") is codified at Cal.
 20 Penal Code §§ 630 to 638. The Act begins with its statement of purpose.

21 The Legislature hereby declares that advances in science and technology
 22 have led to the development of new devices and techniques for the
 23 purpose of eavesdropping upon private communications and that the
 24 invasion of privacy resulting from the continual and increasing use of
 such devices and techniques has created a serious threat to the free
 exercise of personal liberties and cannot be tolerated in a free and
 civilized society.

25 Cal. Penal Code § 630.

26 75. California Penal Code § 631(a) provides, in pertinent part:

27 Any person who, by means of any machine, instrument, or contrivance,
 28 or in any other manner ... willfully and without the consent of all parties

1 to the communication, or in any unauthorized manner, reads, or attempts
 2 to read, or to learn the contents or meaning of any message, report, or
 3 communication while the same is in transit or passing over any wire,
 4 line, or cable, or is being sent from, or received at any place within this
 5 state; or who uses, or attempts to use, in any manner, or for any purpose,
 6 or to communicate in any way, any information so obtained, or who aids,
 7 agrees with, employs, or conspires with any person or persons to
 8 unlawfully do, or permit, or cause to be done any of the acts or things
 9 mentioned above in this section, is punishable by a fine not exceeding
 10 two thousand five hundred dollars (\$2,500).

11 76. A defendant must show it had the consent of all parties to a
 12 communication.

13 77. At all relevant times, Defendant aided, agreed with, and conspired with
 14 Facebook to track and intercept Plaintiffs' and Class members' internet
 15 communications while accessing its websites. Defendant assisted these interceptions
 16 without first receiving authorization or consent from Plaintiffs and Class members.

17 78. Defendant, when aiding and assisting Facebook's eavesdropping,
 18 intended to help Facebook learn some meaning of the content in the URLs and the
 19 content the visitor requested.

20 79. The following items constitute "machine[s], instrument[s], or
 21 contrivance[s]" under the CIPA, and even if they do not, the Facebook Tracking Pixel
 22 falls under the broad catch-all category of "any other manner":

- 23 a. The computer codes and programs Facebook used to track
 24 Plaintiffs' and the Class members' communications while they
 25 were navigating Defendant's websites;
- 26 b. The Plaintiffs' and Class members' browsers;
- 27 c. The Plaintiffs' and Class members' computing and mobile
 28 devices;
- d. Facebook's web and ad servers;
- e. The web and ad-servers from which Facebook tracked and
 intercepted the Plaintiffs' and Class members' communications

1 while they were using a web browser to access or navigate
 2 Defendant's websites;

3 f. The computer codes and programs used by Facebook to effectuate
 4 its tracking and interception of the Plaintiffs' and Class members'
 5 communications while they were using a browser to visit
 6 Defendant's websites; and

7 g. The plan Facebook carried out to effectuate its tracking and
 8 interception of the Plaintiffs' and Class members'
 9 communications while they were using a web browser or mobile
 10 application to visit Defendant's websites.

11 80. Pursuant to California Penal Code § 637.2, Plaintiffs and Class members
 12 have been injured by the violation of California Penal Code § 631 and each seek
 13 damages for the greater of \$5,000 or three times the actual amount of damages, as
 14 well as injunctive relief.

15 **COUNT II**
 16 **Violation Of The California Invasion Of Privacy Act,**
 17 **Cal. Penal Code § 632**

18 81. Plaintiffs repeat the allegations contained in the paragraphs above as if
 19 fully set forth herein.

20 82. Plaintiffs bring this Count individually and on behalf of the members of
 21 the putative Class.

22 83. The California invasion of Privacy Act ("CIPA") is codified at Cal.
 23 Penal Code §§ 630 to 638.

24 84. California Penal code § 632(a) provides, in pertinent part:

25 A person who, intentionally and without the consent of all parties to a
 26 confidential communication, uses an electronic amplifying or recording
 27 device to eavesdrop upon or record the confidential communication,
 28 whether the communication is carried on among the parties in the
 presence of one another or by means of a telegraph, telephone, or other
 device, except a radio, shall be punished by a fine not exceeding two
 thousand five hundred dollars (\$2,500) per violation.

1 85. Defendant is liable for aiding and abetting violations of Section 632 by
2 Meta and other third-party vendors.

3 86. The following items constitute “an electronic amplifying or recording
4 device” under the CIPA:

- 5 a. The computer codes and programs Facebook used to track
6 Plaintiffs’ and the Class members’ communications while they
7 were navigating Defendant’s websites;
- 8 b. The Plaintiffs’ and Class members’ browsers;
- 9 c. The Plaintiffs’ and Class members’ computing and mobile
10 devices;
- 11 d. Facebook’s web and ad servers;
- 12 e. The web and ad-servers from which Facebook tracked and
13 intercepted the Plaintiffs’ and Class members’ communications
14 while they were using a web browser to access or navigate
15 Defendant’s websites;
- 16 f. The computer codes and programs used by Facebook to effectuate
17 its tracking and interception of the Plaintiffs’ and Class members’
18 communications while they were using a browser to visit
19 Defendant’s websites; and
- 20 g. The plan Facebook carried out to effectuate its tracking and
21 interception of the Plaintiffs’ and Class members’
22 communications while they were using a web browser or mobile
23 application to visit Defendant’s websites.

24 87. The data collected on Defendant’s websites constitute “confidential
25 communications,” as that term is used in Section 632, because class members had
26 objectively reasonable expectations of privacy with respect to their personally
27 identifiable information.

28 88. A defendant must show it had the consent of all parties to a

1 communication.

2 89. At all relevant times, Defendant aided, agreed with, and conspired with
3 Facebook to track and intercept Plaintiffs' and Class members' internet
4 communications while accessing its websites. Defendant assisted these interceptions
5 without first receiving authorization or consent from Plaintiffs and Class members.

6 90. Pursuant to Cal. Penal Code § 637.2, Plaintiff and class members have
7 been injured by the violations of Cal. Penal Code § 632, and each seek damages for
8 the greater of \$5,000 or three times the amount of actual damages, as well as
9 injunctive relief.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs, individually and on behalf of all others similarly
12 situated, seek judgment against Defendant, as follows:

- 13 a. For an order certifying the putative Class and naming Plaintiffs as
14 the representatives of the putative Class and Plaintiffs' attorneys
15 as Class Counsel to represent the putative Class members;
- 16 b. For an order declaring that the Defendant's conduct violates the
17 statutes referenced herein;
- 18 c. For an order finding in favor of Plaintiffs and the putative Class
19 on all counts asserted herein;
- 20 d. For statutory damages in amounts to be determined by the Court
21 and/or jury;
- 22 e. For prejudgment interest on all amounts awarded;
- 23 f. For injunctive relief as pleaded or as the Court may deem proper;
24 and
- 25 g. For an order awarding Plaintiffs and the putative Class their
26 reasonable attorneys' fees and expenses and costs of suit.

27 **DEMAND FOR TRIAL BY JURY**

28 Plaintiffs hereby demand a trial by jury of all issues so triable.

1 Dated: November 13, 2023

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

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